

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of

Revision of Rules and Policies
for the Direct Broadcast
Satellite Service

IB Docket No. 95-168
PP Docket No. 93-253

To: The Commission

COMMENTS OF LOCKHEED MARTIN CORPORATION

The Space and Strategic Missiles Sector of Lockheed Martin Corporation ("Lockheed Martin")^{1/} hereby comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding,^{2/} and, more particularly, on the Commission's proposal therein to use competitive bidding to assign the available Direct Broadcast Satellite Service ("DBS") orbital/channel allocations.^{3/} Lockheed Martin believes that the general use of competitive bidding to assign satellite spectrum or orbital locations would directly contravene the

^{1/} The Space and Strategic Missiles Sector of Lockheed Martin Corporation, a major aerospace and defense company, specializes in the development of sophisticated spacecraft, launch systems, missiles and other high technology products. Its interest in this proceeding is based on the implications that the Commission's proposed spectrum allocation methods could have for future satellite-related FCC proceedings, and for the health of the U.S. satellite industry.

^{2/} Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253 (FCC 95-443), slip op. (released October 30, 1995) ("NPRM").

^{3/} See id. at 5-7, 30-47.

statutory public interest objectives that all FCC license auctions must promote. While the purely domestic nature of the allocations here at issue may permit the Commission to assign domestic DBS channels using auctions, the Commission must be careful to premise any such use of auctions on the unique nature of the available domestic DBS allocations so as not to establish a precedent that could endanger the entire U.S. satellite industry and other important U.S. interests.

I. The Commission's Use Of Competitive Bidding To Resolve Mutual Exclusivity Among Applications Must Further Specific Public Interest Goals.

In the NPRM, the Commission proposes to reassign the 51 DBS channels formerly assigned to Advanced Communications Corporation ("ACC"), as well as one additional unassigned DBS channel, by means of competitive bidding.^{4/} Whereas the Commission previously stated that it would apportion any reassigned DBS allocations equally among existing DBS permittees up to the number of allocations requested in their respective applications,^{5/} the Commission notes that it is now authorized by Section 309(j) of the Communications Act to resolve mutual

^{4/} See id. at 4 & n.13, 5-7.

^{5/} Id. at 4 (¶ 7) (quoting Continental Satellite Corp., 4 FCC Rcd 6292 (1989), partial recon. denied, 5 FCC Rcd 7421 (1990)).

exclusivity among initial applications for licenses or construction permits through the use of auctions, under limited circumstances, in order to further certain public interest objectives.^{6/} Those objectives are, inter alia: The development and rapid deployment of new technologies, products and services for the benefit of the public; promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people; recovery for the public of a portion of the value of the public spectrum resource; and efficient and intensive use of the electromagnetic spectrum.^{7/}

II. The General Use Of Auctions To Assign International Satellite Orbital/Spectrum Resources Would Contravene The Commission's Statutory Public Interest Objectives.

Whether or not the Commission chooses to employ auctions to assign spectrum or orbital locations in this proceeding, it must not consider such procedures as a general mechanism for assigning satellite spectrum or orbital locations. Such use of auctions would have disastrous consequences for U.S. economic, technological and security interests, thereby running

^{6/} See id. at 31-32 (¶ 73) (citing 47 U.S.C. § 309(j)).

^{7/} See id.

directly counter to the public interest goals that the Commission is required to pursue.

As Lockheed Martin has previously observed in a different proceeding, the suitability of auctions for domestic terrestrial services where service areas are local and well-defined does not make them appropriate for non-local services that transcend national boundaries.^{8/} Rather, the auctioning of international spectrum and orbital locations would raise issues of international comity and reciprocal entry that would endanger the commercial viability of all international satellite services.

If the Commission were to approve auctions as a general means of assigning satellite spectrum or orbital locations in the United States, there can be no doubt that U.S. providers would be subject to demands for payment to make use of such resources in other countries that fall within the footprints of U.S. satellite systems. The combined effect of nations throughout the world imposing such demands on U.S. regional and global satellite system operators would plainly make the provision of international satellite services enormously expensive. The unpredictable scope of the costs of obtaining access to

^{8/} See Comments of Lockheed Martin Corporation, CC Docket No. 92-297 (filed September 7, 1995) at 4.

international spectrum or orbital locations from other countries would also make the task of attracting financing for international satellite services far more difficult than it already is.^{9/} The resultant harm to the U.S. satellite industry would have a significant detrimental impact on the U.S. economy, and would impede the provision of important new services to U.S. consumers.

The use of auctions by other nations to assign international spectrum and orbital locations would also add uncertainty to the Commission's own auction processes. The Commission has previously noted that auction mechanisms function best when all bidders are well-informed concerning the utility and value of the spectrum.^{10/} As long as the use of auctions by each foreign nation remains an open question, however, bidders in the United States would have no accurate way of knowing the true value of the international spectrum or orbital locations they hope to obtain from the Commission. This uncertainty would be compounded by questions as to the reliability of the varying auction procedures that may be employed by foreign nations.

^{9/} See Penelope Longbottom, Auctions Are Not the Answer, Satellite Communications, November 1995, at 66.

^{10/} See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 9 FCC Rcd 2348, 2362 (1994).

Moreover, domestic bidding for spectrum and orbital locations would leave the United States open to charges that it is violating longstanding International Telecommunication Union ("ITU") policies against treating such resources as commodities to be bought and sold. It would be difficult, certainly, to distinguish auctions of such resources from the pursuit of orbital slots and spectrum by other nations for the sole purpose of reselling them at a profit. The pursuit of a short-term boon for the federal treasury over the long-term benefits of international cooperation in the management of global resources would not comport with the leadership role that the United States has played in international satellite communications to date.

The use of auctions to assign international satellite spectrum could also increase the cost borne by the U.S. government in safeguarding national security. The prevailing view of the national security policy community today is that greater use of commercial telecommunications systems is the most efficient and cost-effective way to fulfill military and national security communications requirements. Significant developments in satellite communications technology are rapidly establishing an affordable, worldwide communications capability that has

already been proven to enhance U.S. military effectiveness.^{11/}

In the future, affordable military systems will depend heavily on commercially developed technology. Should the growth of the global communications network be impeded through the use of spectrum auctions, the U.S. military will be forced to shoulder the expense of establishing reliable communications systems of its own.

The aforementioned consequences of using auctions to assign satellite spectrum and orbital locations simply cannot be squared with the public interest factors that the Commission is required to consider in awarding licenses by means of competitive bidding. Specifically, the development and deployment of satellite services for the benefit of the public will only be impeded if U.S. satellite systems must face auctions in countries around the world; economic opportunity, competition and innovative technologies would be stifled as licensees find themselves unable to obtain sufficient financing; the one-time recovery of funds for the U.S. government that auctions will afford will be significantly outweighed by long-term detrimental economic effects; and the Balkanization of the global

^{11/} During Operation Desert Storm, for example, nearly 75 percent of military communications traffic traveled over commercial systems.

orbital/spectrum resource can hardly be considered an efficient and intensive use of that resource's tremendous potential.

III. Should the Commission Adopt Its Auction Proposal In This Proceeding, It Must Explicitly Base That Decision On the Unique Nature Of The International Allocation Scheme For DBS.

As the Commission suggests, the unusual nature of the U.S. DBS orbital/channel resource sets this proceeding apart from any other involving the assignment of spectrum or orbital locations to the satellite services.^{12/} Under the ITU Region 2 Plan for the Broadcast Satellite Service ("BSS"), adopted at RARC-83, the United States has been allocated a total of 256 channels at eight orbital locations from which to provide domestic DBS service.^{13/} The Commission observes that "[t]his method of spectrum allocation at identified orbital locations is virtually unique in the satellite services."^{14/} In fact, "for all practical purposes, DBS is the only service in which all orbital/channel resources have been allocated to the United States by international agreement."^{15/}

^{12/} See NPRM, FCC 95-443, slip op. at 7-8 (¶ 18).

^{13/} See id.

^{14/} Id. at 8 (¶ 18).

^{15/} Id. at n.27.

Because it is well-established that the BSS orbital/channel resources at 110° W.L. and 148° W.L. are designated for U.S. use, the Commission need not look beyond U.S. borders in deciding whether the use of auctions to assign those resources in this proceeding would further its statutorily mandated public interest goals. The same cannot be said, however, for the assignment of other satellite spectrum or orbital locations. For this reason, the Commission must explicitly base any decision to employ auctions in this proceeding on the unique domestic nature of the available DBS orbital/spectrum resources.

IV. Conclusion

For the foregoing reasons, the Commission must premise any decision to employ auctions to assign the available DBS orbital/spectrum resources on the domestic nature of those resources. Under no circumstances should the Commission employ auctions to assign other satellite spectrum or orbital locations.

Respectfully submitted,

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